

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FLORA M. ARONSON,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner of
Social Security,

Defendant.

No. CV-12-5014-EFS

**ORDER GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION AND
DENYING PLAINTIFF'S SUMMARY-
JUDGMENT MOTION**

I. INTRODUCTION

Before the Court, without oral argument, are cross-summary-judgment motions. Plaintiff Flora M. Aronson appeals the Administrative Law Judge's (ALJ) denial of her application for Supplemental Security Income and Disability Insurance Benefits. ECF No. 15. Plaintiff contends the ALJ's ultimate decision – the denial of her claim for benefits – is based on legal error and not supported by substantial evidence. ECF No. 16. Defendant Carolyn W. Colvin, the Commissioner of Social Security ("Commissioner"), asks the Court to affirm the ALJ's decision finding Plaintiff would not be disabled if she stopped using drugs and alcohol. ECF No. 19. After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court affirms the ALJ's decision and

1 therefore denies Plaintiff's motion and grants the Commissioner's
2 motion.

3 **II. BACKGROUND**

4 **A. Factual Background¹**

5 Plaintiff, a 51-year-old Native American woman, has a tenth
6 grade education with a general equivalency diploma (GED). ECF No. 12,
7 at 35. At the time of her administrative hearing, Plaintiff was 46
8 years old and living alone in Pasco, Washington. *Id.* She has worked
9 as a construction worker, a waitress, and a cook. *Id.* at 553-54.
10 Most recently, in 2008, Plaintiff was employed as a maintenance worker
11 at her apartment complex in Pasco. *Id.* at 39-40 & 189-90. Plaintiff
12 had a tumultuous upbringing, ECF No. 16, at 2-4, and has suffered from
13 a lifelong battle with drug and alcohol dependence, *id.* at 7-8. At
14 the time of her first hearing in 2009, Plaintiff admitted to drinking
15 at least one beer every day. ECF No. 12, at 40. During her 2010
16 hearing, Plaintiff stated that she was currently two-months sober, and
17 the longest period of sobriety in her life lasted four months. *Id.* at
18 540.

19 In 2007, Angelo Ballasiotes, a board certified psychiatric
20 pharmacist, diagnosed Plaintiff with depression, polysubstance abuse,
21 and attention deficit hyperactivity disorder (ADHD). *Id.* at 298.
22 Plaintiff reported a history of bipolar disorder, but it is not clear
23

24 ¹ The facts are only briefly summarized. A detailed recitation of the
25 facts is contained in the administrative hearing transcript and the
26 ALJ's decision.

1 when this diagnosis was made, and Dr. Ballasiotes indicated that
2 Plaintiff's history of amphetamine use made any bipolar diagnosis
3 "questionable at best." *Id.* at 300. In 2010, Dr. Laurie Zimmerman
4 confirmed the diagnoses made by Dr. Ballasiotes, and added a diagnosis
5 of anxiety disorder. *Id.* at 531. It does not appear that Plaintiff
6 has ever been hospitalized for any of her mental disorders.

7 Plaintiff indicated that she was regularly attending mental
8 health treatment and at one point in 2008 she was able to keep an
9 apartment and pay all of her bills without assistance. *Id.* at 38-39.
10 During her 2009 hearing, Plaintiff was separated from a previous
11 husband but in another relationship. *Id.* at 44. Plaintiff did not
12 testify about her daily routine in either of her hearings, but she has
13 alleged that her mental disorders severely impact her ability to
14 function on a daily basis. *Id.* at 242.

15 **B. Procedural History**

16 In May 2007, Plaintiff filed for Supplemental Security Income
17 and Disability Insurance Benefits under Title XVI of the Social
18 Security Act, 42 U.S.C. §§ 1381-1383f. She alleges disability
19 beginning in January 2004 due to depression; anxiety; learning
20 disability; ADHD; post-traumatic stress disorder (PTSD); sleep
21 disorder; memory problems; asthma; anorexia; hepatitis C;
22 polysubstance abuse; and two other ailments which Plaintiff has not
23 defined, Acute OV and Chronic DV. ECF No. 16, at 2. In 2007, her
24 claim was denied by the Social Security Administration. ECF No. 12,
25 at 49. The ALJ denied Plaintiff's claim after two hearings, *id.* at
26 11-21, and finally, the Social Security Administration denied

1 Plaintiff's request for review. Plaintiff now brings this action
2 pursuant to 42 U.S.C. § 405(g), claiming that the ALJ's decision is
3 based on legal error and not supported by substantial evidence.

4 **III. LEGAL STANDARD**

5 **A. Disability Determination**

6 A "disability" is defined as the "inability to engage in any
7 substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death
9 or which has lasted or can be expected to last for a continuous period
10 of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A),
11 1382c(a)(3)(A). The decision-maker uses a five-step sequential
12 evaluation process to determine whether a claimant is disabled. 20
13 C.F.R. §§ 404.1520, 416.920.

14 Step one assesses whether the claimant is engaged in substantial
15 gainful activities. If she is, benefits are denied. 20 C.F.R. §§
16 404.1520(b), 416.920(b). If she is not, the decision-maker proceeds
17 to step two.

18 Step two assesses whether the claimant has a medically severe
19 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c),
20 416.920(c). If the claimant does not have a severe impairment or
21 combination of impairments, the disability claim is denied. If the
22 impairment is severe, the evaluation proceeds to the third step.

23 Step three compares the claimant's impairment with a number of
24 listed impairments acknowledged by the Commissioner to be so severe as
25 to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),
26 404 Subpt. P App. 1, 416.920(d). If the impairment meets or equals

1 one of the listed impairments, the claimant is conclusively presumed
2 to be disabled. If the impairment does not meet or equal one of the
3 listed impairments, the evaluation proceeds to the fourth step.

4 Step four assesses whether the impairment prevents the claimant
5 from performing work she has performed in the past. This includes
6 determining the claimant's residual functional capacity. 20 C.F.R. §§
7 404.1520(e), 416.920(e). If the claimant is able to perform her
8 previous work, she is not disabled. If the claimant cannot perform
9 this work, the evaluation proceeds to the fifth step.

10 Step five, the final step, assesses whether the claimant can
11 perform other work in the national economy in view of her age,
12 education, and work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f);
13 see *Bowen v. Yuckert*, 482 U.S. 137 (1987).

14 The burden of proof shifts during this sequential disability
15 analysis. The claimant has the initial burden of establishing a *prima*
16 *facie* case of entitlement to disability benefits. *Rhinehart v. Finch*,
17 438 F.2d 920, 921 (9th Cir. 1971). The claimant meets this burden if
18 she establishes that a physical or mental impairment prevents her from
19 engaging in her previous occupation. The burden then shifts to the
20 Commissioner to show 1) the claimant can perform other substantial
21 gainful activity, and 2) that a "significant number of jobs exist in
22 the national economy" which the claimant can perform. *Kail v.*
23 *Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled
24 only if her impairments are of such severity that she is not only
25 unable to do her previous work but cannot, considering her age,
26 education, and work experiences, engage in any other substantial

1 gainful work which exists in the national economy. 42 U.S.C. §§
2 423(d)(2)(A), 1382c(a)(3)(B).

3 **B. Standard of Review**

4 On review, the Court considers the record as a whole, not just
5 the evidence supporting the ALJ's decision. See *Weetman v. Sullivan*,
6 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d
7 525, 526 (9th Cir. 1980)). The Court upholds the ALJ's determination
8 that the claimant is not disabled if the ALJ applied the proper legal
9 standards and there is substantial evidence in the record as a whole
10 to support the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
11 Cir. 1983) (citing 42 U.S.C. § 405(g)); *Browner v. Sec'y of Health &*
12 *Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987) (recognizing that a
13 decision supported by substantial evidence will be set aside if the
14 proper legal standards were not applied in weighing the evidence and
15 making the decision). Substantial evidence is more than a mere
16 scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir.
17 1975), but less than a preponderance, *McAllister v. Sullivan*, 888 F.2d
18 599, 601-02 (9th Cir. 1989); *Desrosiers v. Sec'y of Health & Human*
19 *Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). "It means such relevant
20 evidence as a reasonable mind might accept as adequate to support a
21 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
22 (citations omitted). "[S]uch inferences and conclusions as the [ALJ]
23 may reasonably draw from the evidence" will also be upheld. *Mark v.*
24 *Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). If the evidence
25 supports more than one rational interpretation, the Court must uphold
26

1 the ALJ's decision. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir.
2 1984).

3 **IV. ANALYSIS**

4 Plaintiff raises four arguments in support of her contention
5 that the ALJ erroneously assessed her disability claim. First,
6 Plaintiff contends the opinions of the treating and examining medical
7 experts in her case were not given sufficient weight; second, she
8 argues the ALJ improperly rejected a number of her alleged disorders
9 at step two of the sequential evaluation process; third, she alleges
10 the ALJ unfairly rejected her subjective complaints; and fourth, she
11 claims the ALJ failed to conduct a proper step four analysis. Upon
12 review of the entire record, the Court rejects these arguments and
13 finds the ALJ's determination that Plaintiff is not disabled is
14 supported by substantial evidence.

15 The ALJ properly considered all relevant medical testimony in
16 coming to the conclusion that Plaintiff would not be disabled absent
17 her substance dependency and abuse issues. The ALJ properly dismissed
18 the opinions of Ms. Smith, a therapist who saw Plaintiff in 2007 when
19 she was incarcerated in Benton County, and Mr. Gusic, a relationship
20 therapist. Ms. Smith only saw Plaintiff on one occasion after
21 Plaintiff had been using drugs and alcohol regularly, see *id.* at 377-
22 83, and Mr. Gusic assisted Plaintiff in coping with various
23 relationships she was struggling with, ECF No. 16, at 9. Therefore,
24 neither of these individuals were in a position to assess Plaintiff's
25 ability to work for the purposes of this claim: it was not improper
26 for the ALJ to give more weight to other opinions.

1 The medical evidence that the ALJ did credit was the most
2 credible evidence available. The ALJ relied on Dr. Ballasiotes, a
3 board certified psychiatric pharmacist, who regularly saw Plaintiff
4 and prescribed her medication, to support the ALJ's conclusion that
5 Plaintiff's problems improved with prolonged periods of sobriety.²
6 *Id.* at 20. Dr. Khushalani – a chemical dependency expert who reviewed
7 the entire record in this case – reiterated Dr. Ballasiotes's opinion
8 and concluded that Plaintiff was not disabled absent the effects of
9 drugs and alcohol. These two experts were credible sources, and their
10 opinions support the ALJ's conclusion in this case.

11 The ALJ also properly excluded all of Plaintiff's alleged
12 disorders – other than her substance abuse and depression – at step
13 two. An impairment is severe if it "significantly limits [a
14 claimant's] physical or mental ability to do basic work activities."
15 20 C.F.R. §§ 404.1520(c), 416.920(c). Accordingly, mild or minor
16 psychological impairments are not considered severe. 20 C.F.R. §§
17 404.1520a(d)(1), 416.920a(d)(1). If Plaintiff has any claim for error
18 at step two, it rests with the ALJ's dismissal of her anxiety
19 complaints at step two. However, there is very little objective
20

21 ² Although the ALJ does not directly credit Dr. Ballasiotes's notes, the
22 ALJ wrote, "Further, the medical records show that without drugs and
23 alcohol, the claimant can carry out routine, repetitive tasks (Exh,
24 p.3)." ECF No. 12, at 20. Though this citation is ambiguous, page 3 of
25 Dr. Ballasiotes's notes indicate that Plaintiff has significantly
26 improved after participation in an alcohol treatment program. *Id.* at
299.

1 evidence supporting Plaintiff's complaints regarding anxiety and panic
2 attacks, and there is virtually no evidence suggesting how or why this
3 condition severely impacts Plaintiff's ability to work. Yet, even if
4 this Court were to assume it was erroneous for the ALJ not to
5 expressly consider anxiety after step two, Dr. Khushalani took this
6 anxiety into account and recommended limited public contact for
7 Plaintiff, ECF No. 12, at 551-52, and the ALJ included this
8 information in the hypothetical posed to the vocational expert, *id.* at
9 555. Therefore, any possible failure to identify anxiety at step two
10 was harmless because the effects of anxiety were considered later in
11 the analysis. See *Burch v. Barnhart*, 400 F.3d 676, 682-84 (9th Cir.
12 2005) (finding that failure to identify a specific impairment as
13 severe at step two is harmless if the effects are considered in later
14 steps of the analysis).

15 All of Plaintiff's other proposed disorders were properly
16 dismissed at step two. Plaintiff did not provide sufficient evidence
17 to show that her learning disability, ADHD, post-traumatic stress
18 disorder, sleep disorder, memory problems, asthma, anorexia, hepatitis
19 C, Acute OV, and Chronic DV had a severe impact on her ability to
20 work. In fact, Plaintiff makes no connection between many of these
21 disorders – like PTSD, for example – and the specific, untreatable
22 interference they cause with her ability to work. Furthermore, the
23 ALJ's conclusion that many of these problems would not be as severe if
24 Plaintiff abstained from substance abuse is supported by the medical
25 records in this case. See ECF No. 12, at 287-99.

1 The ALJ properly considered Plaintiff's subjective complaints.
2 As stated above, the objective evidence from Dr. Ballasiotes – which
3 was relied upon by Dr. Khushalani – suggests that Plaintiff's
4 impairments began to improve with prolonged periods of sobriety. That
5 evidence remains uncontroverted. Furthermore, Plaintiff's own
6 testimony suggests that she was able to function at a fairly high
7 level for periods of time after her claim was filed. *Id.* at 38-39
8 (Plaintiff testified that – at some unidentified period of time – she
9 was able to live on her own, maintain an apartment, and pay all of her
10 bills.). Accordingly, the Court finds the ALJ's decision to reject
11 Plaintiff's subjective complaints in favor of the objective evidence
12 is properly supported by substantial evidence.

13 Finally, the ALJ did not error in concluding that Plaintiff
14 could return to her previous work as a construction worker. The
15 vocational expert testified that a person with Plaintiff's
16 qualifications, age, and work experience who can engage in and follow
17 simple directions but not complex ones and can only have occasional
18 contact with the general public, could perform work as a construction
19 worker. *Id.* at 555. Accordingly, the ALJ found that Plaintiff could
20 return to work as a construction worker, both as Plaintiff previously
21 performed that work and as that work is performed in the national
22 economy. *Id.* at 21. This finding is consistent with the medical
23 evidence and expert testimony in the record; therefore, the ALJ did
24 not err in his analysis at step four.

25 //

26 /

V. CONCLUSION

In summary, the Court finds the record contains substantial evidence from which the ALJ properly concluded – using the correct legal standards – that Plaintiff did not suffer from a disability. For the aforementioned reasons, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

2. The Commissioner's Motion for Summary Judgment, **ECF No. 19**, is **GRANTED**.

3. The Clerk's Office is directed to **ENTER JUDGMENT** in the Commissioner's favor, and to **CLOSE** this file.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 22nd day of August 2013.

s/ Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge